United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

Closed
- Files

76-1515

United States Court of Appeals

For The Second Circuit

Docket No. 76-1515

UNITED STATES OF AMERICA,
Appellee,

against

LOUIS JAMES DeSALVATORE, a/k/a LOUIS PIZZA,
Defendant-Appellant.

BRIEF AND APPENDIX ON BEHALF OF APPELLANT

PREMINGER, MEYER & LIGHT
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Brooklyn, New York 11201

STANLEY M. MEYER
Of Counsel

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- X

UNITED STATES OF AMERICA,

Appellee, Docket No. 76-1515

-against-

LOUIS JAMES DeSALVATORE, a/k/a LOUIS PIZZA,

Defendant-Appellant.

- X

BRIEF ON BEHALF OF APPELLANT

This is an appeal from a judgment of the United States District Court for the Eastern District of New York, rendered October 20, 1976, convicting appellant of Conspiracy to Possess and Distribute Narcotics in violation of Title 21, Sections 812, 841(a) and 841(b)(1)(A) of the United States Code.

Appellant was sentenced by United States District Judge Bramwell to a maximum term of imprisonment of ten years and seven years special parole. Appellant had pleaded guilty on June 22, 1976 to the Seventh Count of a Seven Count Indictment, to cover the entire indictment, and the other six counts were thereafter dismissed.

Two of the other defendants, ANTHONY FAGO and JOHN GIANGRANDE, went to trial. FAGO was convicted, but GIANGRANDE was acquitted by the jury.

Thereafter, on October 20, 1976, appellant came on for sentence before Judge Bramwell. This appeal is based upon alleged improprieties and errors at the time of sentence which operated to deprive appellant of due process of law regarding his sentence proceedings.

STATUTES

21 U.S.C. Section 841 Prohibited acts A - Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally --

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance ...

Penalties

(b) Except as otherwise provided in Section 845 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1) (A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

FACTS

A probation report was prepared with respect to the sentence to be imposed upon the appellant, and appellant and his counsel had an opportunity to, and did actually, examine that report a few days prior to sentence. In fact, certain objections were taken to the report and a formal pre-sentence memorandum was prepared by appellant's counsel and submitted to the Court prior to sentence (32A-39A). The essential issues that were argued at the time of the actual sentence involved the appellant's role in the alleged narcotics conspiracy and other matters. The difficulty came about when it become apparent that the Court had acquired a good deal of knowledge due to the fact that between the time appellant took his plea and the time he came on for sentence, the other two defendants had actually gone to trial before the same Judge. The Court therefore heard appellant's counsel argue that it was natural for the other two defendants to characterize this appellant as being the main culprit in the scheme, and the argument was made to the sentencing Court that it had made certain statements based upon a false impression of defendant's role created by the other two defendant in the other trial, rather than on the facts as they were known to be.

At the inception of the sentence proceedings it became apparent that the Court and the United States Attorney had received the pre-sentence memorandum (9A). At the outset, appellant's attorney pointed out to the Court that appellant had taken a plea of guilty rather than having been convicted by a jury, but the Court said that it had spent three weeks on trial in connection with this case. One defendant

was found guilty and one was found not guilty. The Court heard the case and had no doubt, consistent with the plea, as to the guilt of appellant (11A). Counsel pointed out the fact that he had pleaded guilty, which probably in some way altered testimony that was presented in the other case, since both defense counsel tried to throw all the weight on to appellant because he was not there (12A). It was argued that one of the reasons appellant pleaded guilty was because of his attorney's advice, although he did not attempt to disclaim his guilt with regard to the count he pleaded to (12A-13A). The point of the argument, and it was made again by counsel, was that appellant's participation had been exaggerated by counsel in an attempt to get their clients off, and that what the Court heard was a distorted view of appellant's role in this case (13A-14A). The attorney protested that appellant was not the main supplier, was not the main cog in the wheel, but that he was just a go-between between the buyer and seller at the insistence of the government (14A-15A). Appellant was involved and deserved to be punished, but he was not the main character in the scheme as the other two defendants tried to demonstrate in the other trial. The attorney pointed out, as was reflected in the pre-sentence memorandum, that the appellant worked in a bar and ran several ice cream trucks which his son operated; the point being that his sources of income were known and aboveboard rather than hidden and the result of narcotics dealings. The attorney also pointed out that the probation report was in many ways inaccurate, and although the Court said it would accept the attorney's statement, the United States Attorney, contrary

to his agreement with counsel, began to address himself to the facts and made statements which may have played a significant role in determining the sentence of the appellant (18A). In fact, MR. PREMINGER, appellant's counsel, clearly said that it was his understanding that the United States Attorney would take no position on the sentence (18A). Yet the United States Attorney, obviously just to rebut the statements made in appellant's pre-sentence report, made a statement which was definitely damaging to the appellant. The United States Attorney, in arguing whether the appellant owned other assets, called the Court's attention to an exhibit, namely a tape, which had been introduced in the other trial, which was a conversation between appellant and a government informant. This conversation related to the purchase of a hot kilo of heroin, and appellant apparently told the informant that his meat market was doing okay. This was referred to to show that he had some ownership interest in the meat market, a factor which is not illegal in any event, but at the same time illustrates that a conversation regarding heroin had taken place (20A). The appellant's attorney cleared that up by saying that the appellant had bought a meat market with someone else because the attorney had actually represented the two men at the closing, but that the store did not do business and it was thereafter closed (20A-21A).The United States Attorney, in an attempt to show that appellant really owned the bar that he worked at, again referred to the transcipt of the tape at the point where the appellant was asked about the bar business, and while appellant did not say he owned the bar, he indicated the payroll was killing him (21A). At another point in the conversation, appellant apparently referred to a bar

and said he used to own that place, and the United States Attorney pointed out that they had sixteen tapes in evidence in which appellant allegedly spoke to the informant about the purchase of narcotics (22A).

Counsel objected to the reference to any tapes that he had not had a right to cross examine on, and then the Court said if appellant had been on trial then counsel would have had that opportunity (22A). Apparently it was clear that the Court was holding these things against appellant and seemed to be berating him for pleading guilty and saving the government the expense of a long trial. Counsel again argued that by the act of pleading guilty appellant had removed himself from the proceedings, and to thereafter use the evidence of the proceedings against him was unfair (23A). The Court said that it would sentence him on what he pleaded to, and not the other things, but then the Court advised that after hearing the evidence at the trial, the Court was fully convinced as to his guilt (23A). The attorney again pointed out that there are many reasons why a defendant pleads guilty, but while the Court said it would not hold his failure to go to trial against him, it was obvious that the Court's determination of appellant's role in this case was based upon the other trial.

The United States Attorney made further references to the transcript of the tape wherein appellant apparently said that he gave up $250,000.00 himself in a conversation in which the United States Attorney alleged they were talking about dope, and that he apparently made $24,000.00 on another narcotics deal with the same informant (24A).

The attorney again objected that the United States Attorney was

violating his agreement that he would take no position at the time of sentence, and that he was trying to establish from the testimony of the other trial that appellant was a serious participant in the narcotics business (25A). The United States Attorney again referred to the transcript to discuss another narcotics transaction, and then the Court discussed the other case. The Judge said that he had spent over three weeks in the other trial, and that the Court was convinced that appellant was implicated and played a leading role in that situation (27A). The Court also took note of the fact that appellant had been involved in previous narcotics crimes, once in the Eastern District of New York and once in Canada, and that the appellant should have been warned to thereafter refrain from dealing in drugs (27A).

That statement was particularly harmful because the fact of the matter was, as counsel pointed out and as the pre-sentence memorandum showed, the case against the appellant in Canada was dismissed and no indictment was ever handed down and the case in the Eastern District of New York resulted in an acquittal by the jury (27A-29A). The Court then reiterated its conviction that appellant was guilty and sentenced him to a term of imprisonment of ten years plus a special parole of seven years (29A-30A).

The attorney again objected that the Court was considering all the things the United States Attorney agreed not to bring into the case, and that appellant was being sentenced based upon evidence in a trial in which appellant was not a participant. The attorney pointed out that appellant took the plea in good faith and it was unfair to thereafter be confronted with evidence he was not able to cross examine on (30A).

The Court again made reference to the appellant's prior history, and when the attorney objected that there was no prior history because appellant had not been convicted of a crime, the Court said while it was not a record, it should have been a warning to him to get out of the narcotics business (30A-31A). The attorney again pointed out that the Court was saying he was in the drug business although he was found not guilty, but the sentence imposed was not disturbed.

POINT I

APPELLANT WAS DEPRIVED OF DUE PROCESS WITH REGARD TO HIS SENTENCING BECAUSE THE COURT RELIED UPON MATTERS NOT PREVIOUSLY BEFORE IT, MATTERS WHICH WERE EXTRINSIC TO THE SENTENCE PROCEEDING AND MATTERS WHICH WERE NOT ACCURATE. THE PROSECUTOR ALSO CONTRIBUTED TO THE UNFAIR ATMOSPHERE.

The appellant is fully aware of this Court's decision in United States v. Stein, ____F.2d (Docket No. 76-1299, decided October 22, 1976).

In the light of that decision, one can imagine that a flood of appeals may come to this Court in which appellants attempt to litigate the length of the sentence imposed on them by District Judges. We believe that this case represents a proper issue for this Court because we fully recognize that the Stein case and the authorities referred to therein made it clear that matters dealing with excessive sentences are pretty much foreclosed from being reviewed. While we do believe that the sentence in this case was excessive, we do not urge this Court to modify the same on that basis, but rather as was the case in Stein, we argue that the Court did not base its determination of the sentence imposed upon appellant on proper factors. We believe that to impose such a harsh

sentence upon an appellant, as in the case at bar, based upon things which occurred in a collateral case not only is unfair to the extent of depriving appellant of due process, but it is also not calculated to encourage defendants in the future to plead guilty and save the government the time and expense of a trial where by doing so they would be placed in a less advantageous position than had they come to trial.

As this Court pointed out in Stein, the case at bar is not one dealing with a limited claim of excess of sentence, as was discussed in United States v. Seijo, _____F.2d_____ (2nd Cir. June 24, 1976) and Dorzynski v. United States, 418 U.S. 424 (1974). On the other hand, this case is similar to Stein, and similar to United States v. Robin, _____F. 2d _____ (2nd Cir. October 15, 1976), as well as United States v. Malcolm, 432 F.2d 809, 815 (2nd Cir. 1970), where the Court misapplied or misconstrued material matters of fact and where the Court relied on things not previously before it to the prejudice of the defendant. Thus, in Malcolm where sentence was vacated because the Court had proceeded under a misapprehension of defendant's criminal record,here, too, appellant's constutional rights were violated because even though he had been acquitted by a jury of his peers, the Court obviously treated the appellant as if he had been a convicted felon in that narcotic case. On two occasions the appellant, thus, had been charged with narcotic violations . One resulted in an acquittal in the Eastern District of New York and the other in a dismissal in a foreign country in which other defendants were thereafter indicted but the appellant was not charged at all. The Court repeatedly made the statement that these cases should have been a warning to appellant (30A-31A), which statements played

a significant part in the sentence meted out. It is most respectfully urged that a Court is absolutely bound by the Constitution to give no weight whatsoever to a conviction or dismissal and must refrain from making statements such as were made in this case, where the Court used these prior events to the detriment of appellant in imposing sentence.

In addition, there were repeated references to tape recordings which were introduced at the other trial, to which appellant was not a party, and these recordings were so significant that the Court made no attempt to hide its feelings that based upon what it had heard in the other trial, appellant was a major narcotics violator and was the guiding force behind the scheme.

It takes no great imagination to recognize that where there are multiple defendants in a criminal case and one is either severed or pleads guilty, the other defendants, in order to extradite themselves, may try to falsely show that the missing defendant was really the ringleader or the main character in the scheme. It does not seem to be basically fair to accept evidence introduced in such a proceeding where the appellant was not a party as conclusive proof of the facts sought to be proven. When one reads all of the sentence minutes in this case, the impression is indisputable that the Court considered the appellant to be the major character in this scheme, and that the Court's conclusions were solely based on the evidence it had heard in the three week period of the other trial. The Constitution guarantees the right of appellant to cross examination and to defend himself if he participated in that other trial, and certainly the appellant would have been in no worse a position

had he refused to plead guilty and gone to trial in that case.

Part of our judicial system is based upon the idea of rehabilitating criminals. One of the first steps is to have the defendant admit his guilt, verbalize his remorse and embark upon the necessary steps towards rehabilitation. It has always been recognized that when the defendant thus pleads guilty and saves the government the expense of a trial, and that other trial would have been greatly lengthened by appellant's participation, he certainly should not suffer for his candidness and forthrightness in admitting his guilt and facing the consequences.

What happened in this case goes against every concept of fairness and is certainly not an inducement to other people similarly situated to admit their crimes and embark upon the road back. If the Court in this case was so influenced by what happened in the other trial, it should have told the appellant to take back his plea and go to trial in that matter. Certainly, appellant would have been no worse off than he stands now. He has been falsely accused of being a major dealer in narcotics and has been sentenced when he had no opportunity to defend himself and no opportunity to test the reliability of that evidence. In addition, there had been an agreement at the time of the taking of the plea that the United States Attorney would take no position on sentence. This agreement was mentioned by appellant's attorney and was acknowledged by the prosecutor (18A-25A). The United States Attorney was allowed to refer to transcripts of tape recordings made of conversations in which appellant was a participant. These recordings were evidently introduced at the other trial and were used to prove to the sentencing Court that appellant was involved in a major way in the

narcotics conspiracy. Of course, counsel for appellant had not heard the recordings. He did not know if there were any exculpatory portions, and he certainly had no right to object to them or cross examine on them, because he was not a participant in that trial. The government clearly broke its promise in this case to take no position on sentencing, and to make statements in the guise of rebutting the appellant's pre-sentence report was improper. After all, the appellant's pre-sentence report was in response to inaccuracies and misstatements contained in the probation report, so that by allowing the United States Attorney to make further statements and refer to extrinsic evidence, the government was allowed to pick itself up by its own boots, because it was the government's misstatements that led to the appellant's memorandum in the first place.

The promise of the government not to take a position on sentence should have been adhered to, and the breach of that agreement added to the unfair atmosphere present at the time of the imposition of sentence. Santobello v. New York, 404 U.S. 257, United States v. Palermo, ___F2d. ___ (2nd Circuit _____).

CONCLUSION

THE JUDGMENT APPEALLED FROM SHOULD BE REVERSED AND THE CASE REMANDED FOR RESENTENCING.

Respectfully submitted,

PREMINGER, MEYER & LIGHT
Attorneys for Appellant
66 Court Street
Brooklyn, New York 11201

STANLEY M. MEYER
Of Counsel

TABLE OF CONTENTS

Minor Cl / ther Misdemeanor

Joined Trbl 0721 Disp./Sentence

District Office

U. S. vs. 75 CR 90-7-1

LOUIS JAMES DE SALVATORE, defendant a/k/a Louis Pizza

Day 1 | Mo. 12 | Yr. 75

No. of Defnts 3

MAGN. CASE NO.

I. CHARGES

U S CODE SECTION: 21:841

Did distribute and possess with intent to distribute cocaine hydrochloride — 7

BAIL FIXED

Denied | Personal Recog | Unsecured | Conditions | AMT Set (DCO) $ 15

Date | Bail Not Made | Bail Status Changed (See Docket)

ATTORNEYS

U.S. Attorney or Asst: Stanley Greenidge

MARTIN LIGHT (834-8888) 66 Court Street, Bklyn, N.Y.

KEY DATES AND INTERVALS

ARREST: 8/27/75 — U.S. Custody or Basis on Above Charges

High Risk Date & Date Designd

INDICTMENT / Information: 12/1/75 — Waived

Superseding Indict/Info

ARRAIGNMENT: 12/11/75

Prosecution Deferred

TRIAL: Trial Began 2-23-76; Trial Ended 6/22/76

Disposition: Convicted | Acquitted | Dismissed | Nolled/Dism

MAGISTRATE

		DATE	INITIAL/No.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant			
COMPLAINT		8/27/75	MS-070B
OFFENSE (In Complaint)		Violation of T-21, U.S.C. Sec. 841	

INITIAL APPEARANCE 9/9/75 — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled | Date Held

Waived | Not Waived | Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME

Dismissed | Held for District GJ | BOND | Held to Answer to U. S. District Co

AT:

Magistrate's Initials

* Show last names and suffix numbers of other defendants on same indictment/information

DEFENDANT(S) ANTHONY TACCETTA, JOHN GIANGRANDE — PROCEEDINGS

V. Excludable (a) (b)

DATE	PROCEEDINGS
12/1/75	Before JUDD,J.- Indictment filed
12/11/75	Before BRAMWELL ,J.- Case called- Deft and counsel present- Deftswaive reading of indictment and each enters a plea of not guilty-Bail cont'd -Case adjd to 2/2/76 for Status Report
12/11/75	Notice of Appearance filed.
2-2-76	Before BRAMWELL, J - Case called for status report & adj'd to 2-11-76 at10 A.M. for further report.
2-11-76	Before Bramwell, J - case called - defts & attys present - adjd to 2-23-76 for trial.
2/11/76	Notice of readiness for trial filed
2/23/76	Before BRAMWELL,J.- Case called- deft and counsel present case adjd to 3/24/76 at 10:00 A.M. Act
3-13-76	Deft Waives rights to Speedy trial/filed
3-24-76	Before BRAMWELL, J - case called - defts & attys present - case adjd to May 5, 1976 for trial on consent.
5-5-76	Before BRAMWELL, J - case called - defts & counsels present - case adjd to May 24, 1976 for trial.

MAGISTRATE DISTRICT DFT DKET TRIES

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
5/21/76	Before BRAMWELL,J.- Case called- motion to dismiss adjd to 5/28/76				
5/24/76	Before BRAMWELL,J.- case called- adjd to 6/7/76 at 10:00 A.M. for trial on consent		2		
6-28-76	Before BRAMWELL, J. - Case called. Motion to dismiss indictment argued. Decision reserved.				
6/3/76	Govt'd memorandum in response to above motion filed				
6-7-76	Before BRAMWELL, J - case called - deft & counsel present - Case marked ready and passed to follow 76 CR 132. d				
6-13-76	Before BRAMWELL, J - case called - deft present - ajd to June 16, 1976 for trial.				
6-15-76	Govts Trial brief filed				
6-16-76	Before BRAMWELL, J - case called - deft present - counsel present- hearing on admission of tapes etc. - Hearing begun and contd to June 17, 1976.				
6-17-76	Before BRAMWELL, J - case called - deft present - counsel present - hearing on audibility of tapes contd - court deems that the tapes areaudible after consideration by the Court. Govt. is permitted to introduce prior criminal acts - case adjd to June 21, 1976 at 11 am.				
6-21-76	Before BRAMWELL, J - case called - deft & counsel present - trial ordered & BEGUN - Jurors selected and sworn - trial contd to 6-22-76				
6-22-76	Before BRAMWELL, J - case called -deft & atty present - deft during trial withdraws not guilty plea and having been advised of his rights by the court and on his own behalf enters a plea of guilty to count 7 - sentence adjd without date - bail contd.				
6-25-76	3 steneographers transcripts filed (dated June 17, June 22 and June 23, 1976 respectively)				
9-21-76	Before BRAMWELL,J.- Case called - defts and Counsels present - trial ordered - selection of jurors begun and continued to Sept. 22,1976 at 10:00 AM.				
10/1/76	Before BRAMWELL,J.-Case called-Deft De Salvatore and counsel Marvin Preminger present-Sentence adjd to 10-15-76 at 10 AM.				
10-15-76	Before BRAMWELL, J - case called - deft ~~[illegible]~~ Preminger present - Counsel MPreminger not present - sentence adjd to Oct. 20, 1976				
10-20-76	Before BRAMWELL, J - case called - deft & counsel Marvin Preminger present - deft sentenced to imprisonment for 10 yrs plus special parole term of 7 yrs on count (7) On motion of AUSA Greenidge cohnts 1 thru 6 are dismissed. Stay of execution of sentence granted to Oct. 27, 1976 at 12 Noon is granted.				
10-20-76	Judgment and commitment filed - certified copies to Marshal.				
10-20-76	Notice of appeal filed.				
10-20-76	Docket entries and duplicate of notice mailed to the court of appeals				
10-27-76	Before Bramwell, J.- Case Called. Deft & Counsel Present. Motion argued. Motion Granted. Bail continued pending appeal.				

(a) Interval (per Section II)	(b) Start Date / End Date	(c) Ltr Code	(d) Total Days

UNITED STATES OF AMERICA

-v-

LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza
ANTHONY FAGO
JOHN GIANGRANDE, a/k/a Cheech

DEFENDANTS

INDICTMENT

21 U.S.C. [illegible]
18 U.S.C. [illegible]

----------X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 12th day of December, 1974, in the Eastern District of New York, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza and ANTHONY FAGO, the defendants herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine hydrochloride.

[Title 21, United States Code, Section 812, 841 (a)(1) and 841 (b)(1)(A)]

COUNT TWO

On or about the 8th day of January, 1975, in the Eastern District of New York, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, the defendant herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately ninety-nine grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1) and 841 (b)(1)(A)]

COUNT THREE

On or about the 19th day of February, 1975, in the Eastern District of New York, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, and JOHN GIANGRANDE, a/k/a Cheech, the defendants herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 4.6 grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1) and 841 (b)(1)(A)]

On or about the 10th day of March, 1975, in the Eastern District of New York, GEORGE JOHN ADAMO, now deceased, and LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, the defendant herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately forty-five grams of heroin hydrochloride. 4a

[Title 21, United States Code, Sections 812, 841 (a)(1), and 841 (b)(1)(A)]

COUNT FIVE

On or about the 20th day of March, 1975, in the Eastern District of New York, GEORGE JOHN ADAMO, now deceased, and LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, the defendant herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately seventy-five grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1), and 841 (b)(1)(A)]

COUNT SIX

On or about the 24th day of March, 1975, in the Eastern District of New York, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, the defendant herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately twenty-eight grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1), and 841 (b)(1)(A)]

COUNT SEVEN

On or about and between the 1st day of December, 1974, and the date of this indictment, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, ANTHONY FAGO, JOHN GIANGRANDE, a/k/a Cheech, and GEORGE JOHN ADAMO, now deceased, agreed together and with each other and with others to the Grand Jury unknown, to violate Sections 812, 841 (a)(1) and 841 (b)(1)(A)

1) It was a part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, heroin, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841 (a)(1) and 841 (b)(1)(A) of Title 21, United States Code.

2) It was further a part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, cocaine, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841 (a)(1) and 841 (b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Eastern District of New York and elsewhere.

1. On or about December 12, 1974, the defendant LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, met with co-conspirator ANTHONY FAGO at the Drift Inn Lounge, 1969 Coney Island Avenue, Brooklyn, New York.

2. On or about December 12, 1974, the defendant LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, distributed one-eighth kilogram of cocaine at the Drift Inn Lounge, 1969 Coney Island Avenue, Brooklyn, New York.

3. On or about February 19, 1975, the defendant LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, met with co-conspirator JOHN GIANGRANDE, a/k/a Cheech, in the Eastern District of New York.

4. On or about February 19, 1975, the defendant JOHN GIANGRANDE, a/k/a Cheech, distributed approximately 496 grams of heroin hydrochloride at the Dolly Rosa Lunchenette, 865 4th Avenue, Brooklyn, New York.

5. On or about March 15, 1975, the defendant [illegible] DE SALVATORE, a/k/a Louie Pizza, met with GEORGE ADAMS, a co-conspirator, now deceased, at the Drift Inn Lounge, [illegible] Avenue, Brooklyn, New York.

6. On or about March 15, 1975, GEORGE ADAMS, now deceased, distributed approximately thirty-one grams of heroin in the Eastern District of New York.

[Title 21, United States Code, Sections 812, 841 (a)(1), 841 (b)(1)(A) and 846]

A TRUE BILL

FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

. x

UNITED STATES OF AMERICA :

- against - : 75-CR-907

LOUIS J. DE SALVATORE, :

Defendant. :

. x

United States Courthouse
Brooklyn, New York

October 20, 1976
10:00 A.M.

B E F O R E :

HONORABLE HENRY BRAMWELL, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STANLEY GREENIDGE
Assistant U. S. Attorney

MARVIN PREMINGER, ESQ.
Attorney for Defendant

MR. GREENIDGE: We are waiting for Mr. Preminger, your Honor. Mr. DeSalvatore is outside.

THE COURT: All right.

Here is Mr. Preminger now.

MR. PREMINGER: I'm sorry, your HOnor.

Your Honor, I sent in the probation report. Did your Honor get it?

THE COURT: The presentence memorandum that you sent in? I sent Mr. Greenidge up to get a copy.

MR. GREENIDGE: I got my copy from a secretary in the office yesterday morning.

THE COURT: You copied my copy?

MR. GREENIDGE: No, I got it from Mr. Preminger, one of Mr. Preminger's secretaries.

MR. PREMINGER: There is one error in it.

THE COURT: Call the case.

THE CLERK: For sentence, United States against Louis J. DeSalvatore.

THE COURT: Is there any legal reason why sentence should not be imposed this morning?

MR. PREMINGER: No legal reason.

THE COURT: Is there any reason why you should not be sentenced today?

MR. DE SALVATORE: No.

THE COURT: I will hear what Mr. Preminger has to say.

MR. PREMINGER: Thank you very much, your Honor, for allowing me to come in this morning instead of on Friday.

I would like to hand up letters that my client has received very recently addressed to your Honor concerning his sentence by people who wrote them concerning their knowledge of the defendant.

THE COURT: I haven't previously seen them, so I am getting these for the first time.

(Pause)

THE COURT: All right, I have read the letters.

MR. PREMINGER: Thank you, your Honor.

THE COURT: One is from an attorney and the others are from business people who are acquainted with him.

I will hear you.

MR. PREMINGER: I knew your Honor is fully aware of what is contained in both reports, the presentence report and the one that we submitted. Also, your Honor, we would like to call your Honor's attention to the typographical error in our report. As your Honor knows Mr. DeSalvatore was not convicted by a jury, he pleaded

guilty.

THE COURT: That is right. The case has been tried.

MR. PREMINGER: Yes.

THE COURT: We were three weeks on trial in connection with this particular case and one defendant was found guilty, Mr. Anthony Fago, and Mr. John Giangrande was found not guilty by the jury.

The one found guilty was found guilty on count seven, which I believe is the count Mr. DeSalvatore pleaded to.

MR. GREENIDGE: That is correct.

THE COURT: The conspiracy count.

MR. PREMINGER: I don't know the gravamen of that, except that my client did plead guilty.

THE COURT: I heard the case. There isn't any doubt in my mind, consistent with the plea, as to the guilt of Mr. DeSalvatore. You asked me what it means and I am telling you.

MR. PREMINGER: May I point out something, Judge? I know my client pleaded guilty because he was guilty. The fact that he did not ask for a trial, the fact that he pleaded guilty without the benefit of a trial by jury or the right to cross-examine witnesses, perhaps in

in some way altered some of the testimony. Your Honor got a view of the case where I'm sure both defense counsels, since Mr. DeSalvatore was out of the case, put it on themselves to throw all the weight onto Mr. DeSalvatore because he wasn't here.

THE COURT: On page 8 of the presentence report, it states as to the defendant's statements, he stated that he pleaded guilty solely on the advice of his attorney.

What is your position on that?

MR. PREMINGER: After discussing the case with my client, he admitted his guilt. He was involved in the situation, and he is guilty.

THE COURT: Did he plead guilty because you told him to plead guilty or because he is guilty?

MR. PREMINGER: Both.

THE COURT: Do you have anything to say to that, Mr. DeSalvatore?

MR. DE SALVATORE: No.

THE COURT: It says here you stated you pled guilty solely on the advice of your attorney. Is that true?

MR. DE SALVATORE: Mr. Preminger said both.

THE COURT: Are you guilty?

MR. DE SALVATORE: Yes, I am guilty.

THE COURT: There is no question in your mind as to that?

MR. DE SALVATORE: No.

MR. PREMINGER: In discussing the plea of guilty with a client, many things enter into the picture. Is it provable? What is the case, and so forth. When Mr. DeSalvatore said he pleaded guilty on my advice, that's what he meant.

THE COURT: It says "solely" here. There is a question in the Court's mind as to whether or not he really --

MR. PREMINGER: We are not looking to withdraw his plea, your Honor. He understands his participation in the event as it was explained in the report. Clearly he was a member of the conspiracy here.

Our contention is, I will ask your Honor if you can put aside all the weight that may have been thrown on him in the trial which he did not participate in. It may have been exaggerated by counsel in an attempt to prove to the jury that their clients were not the main people involved and it was Mr. DeSalvatore. Because I am sure that is what happened. As a trial attorney, that is normal for any counsel to do.

The truth of it is he did plead guilty. He tried to save the Government the time and expense of going to trial.

THE COURT: He could have been here the same three and a half weeks.

MR. PREMINGER: It wasn't his fault.

THE COURT: It's not his fault in any event. It can't be construed as being his fault. Of course, if he had been here it would have been the same three weeks.

MR. PREMINGER: If I had been here it would have been six weeks because I am given to long speeches as your Honor knows.

THE COURT: That is up to you.

MR. PREMINGER: What I am trying to say -- please don't count against Mr. DeSalvatore that which transpired without him being here. I ask your Honor to consider the fact that Mr. DeSalvatore is like any human being, he is good and bad. The bad he did is very bad.

I would like to tell your Honor, as I indicated in our report, Mr. DeSalvatore is not a main supplier. He is not a main cog in anybody's wheel for narcotic smuggling or importation or dealing. What Mr. DeSalvatore did in this deal, your Honor, is act as a go-between

between a buyer and seller, at the insistence of a Government agent who pushed Mr. DeSalvatore to get involved in this situation. He got involved, he deserves to be punished for what he did. I ask your Honor to consider the fact that of all the good Mr. DeSalvatore has done. He has a wonderful reputation in his own community. There are many friends he made who are good honest people. He is dedicated to his wife and children.

The fact is that Mr. DeSalvatore doesn't live off the proceeds of narcotic dealings. He has a very humble and very, very modest standard of living. He lives in a rented house purchased by his family. He is employed in a bar for a salary. He runs several ice cream trucks which his son operates. And as indicated in the report, he purchased on time and is paying off and it is very hard work.

Very recently, at the Italian Festival he worked seven days and seven nights sweating at the San Genaro Festival. He works as hard as anybody. These are not the pursuits or endeavors of a rich narcotic dealer, Judge.

I know Mr. DeSalvatore through my association with him as an attorney. I can tell the Court that I do know he works. I know his wife and children and I

met his father.

This is the first time that he stands before the Court to ask for consideration. He has been involved before, your Honor, and you are aware of his past involvement. I think that that should be totally wiped out because there are no convictions. I know your Honor to be a fair man and you will take everything into consideration in passing sentence on Mr. DeSalvatore.

I was not privileged to hear what went on during the trial or what role it is alleged that Mr. DeSalvatore played.

THE COURT: Of course, you have had the benefit of the 3500 material which was given to the other lawyers in connection with this trial. Is that correct?

MR. PREMINGER: I could have looked at it.

THE COURT: You did look at it.

MR. PREMINGER: No.

THE COURT: What you're saying in your present memorandum, is right in here -- you had to look at it.

MR. PREMINGER: I did look at some.

THE COURT: Well, you've had it. You had that material. You say you weren't at the trial, but this memorandum shows that you had the benefit of the 3500 material which was given to the other defendants for

their use during this trial.

MR. PREMINGER: Yes, Judge, that is true.

THE COURT: We will accept that as a fact. I am not holding it against you. I want the record to show you did have that benefit.

MR. PREMINGER: Yes, it did point out that Mr. DeSalvatore was only a little man which is our contention as shown in our report to your Honor.

So that, in addition Judge, there are certain things in the report which we contend to be untrue. There are certain admissions that Mr. DeSalvatore made and certain telephone numbers attributable to him. I hope your Honor read our report.

THE COURT: I read it.

MR. PREMINGER: If there is any question as to our contention, where we say the report is inaccurate, I wish your Honor could call it to our attention.

THE COURT: I read it and I've taken into consideration those inaccuracies. Of course, those aren't the basis on which the Court intends to act. They were in there and you pointed them out as being inaccurate. I accept them in the fashion you set them forth with your contention on one side and the Government's contention on theother.

MR. GREENIDGE: As part of the plea agreement, I indicated to Mr. Preminger and also his client that I would address myself to the facts as they pertain to the case in the sentencing procedure. Based upon that --

THE COURT: Let me hear from Mr. DeSalvatore first.

MR. PREMINGER: I understood Mr. Greenidge would take no position on the sentence.

THE COURT: I don't know that that is his position. He is permitted to.

MR. PREMINGER: Sure he is.

THE COURT: What is it you don't understand?

MR. PREMINGER: I understand Mr. Greenidge wants to be heard on sentence.

THE COURT: It seems that way.

MR. GREENIDGE: Just to rebut the statements made in the defendant's presentence report, the sentence memorandum presented to me yesterday morning at 11:44 A.M. I said I would not speak as to sentence but I believe there are indications in the report which would indicate that the Government has either presented false information to the Probation Department or in some way tried to create a different record of this defendant now before the Court.

THE COURT: He is going to address himself to that.

MR. PREMINGER: I see. Your Honor, I believe I explored everything. I don't want to belabor the point. His wife and family are in the courtroom. He is part of the family. I would just like to mention that I believe the sentence should reflect this particular act and this act alone and the fact that he is a first offender. There are no ties between him and the underworld or any narcotic ring. This is an isolated thing. He knows people who at the insistence of Mr.Pincus he was willing to do it and this deal took place. He has plead guilty to it. I ask your Honor to be as lenient as possible.

THE COURT: Mr. DeSalvatore, I will hear whatever you may wish to say at this time.

MR. DE SALVATORE: I really have nothing to say, your Honor. I hope you are as lenient as possible, as Mr. Preminger says.

THE COURT: Anything further?

MR. DE SALVATORE: No.

THE COURT: Mr. Greenidge, is there anything you wish to state?

MR. GREENIDGE: In his presentence report the defendant in the section called family and work background has indicated that -- left the impression that he worked at a job at the Drift Inn and doesn't own

that many assets or items. I will call the Court's attention to Exhibit 33, page 29 through 31, where Mr. Pincus and Mr. DeSalvatore engage in conversation prior to the purchase of a hot kilo of heroin and where Mr. DeSalvatore indicates that -- Mr. Pincus indicates how is the meat market and Mr. DeSalvatore answers that the meat market was doing okay, and that he had a man by the name of Louis. He doesn't actually say I own the meat market, but at that particular point of the transcript he says he has a man in the meat market by the name of Louis. The connotation the Government gets from that is he owns the market.

THE COURT: The attorney in Florida agrees.

MR. PREMINGER: Judge, I can clarify that.

THE COURT: He says here, to the best of his knowledge he has never been arrested which is not true, and he has been actively engaged in the meat business for his livelihood. This is one of the letters that you gave me this morning.

MR. PREMINGER: We don't deny it. He is not involved anymore. I represented Mr. DeSalvatore and another man when they bought a meat market in Brooklyn. They had the place for approximately one year and worked very hard, but a new store opened up and it ended up

that both lost four or five thousand dollars each when they sold out four or five months ago.

I can personally represent to the Court that those are the facts because I was the attorney when they bought it and I was the attorney when they sold it. There is still money I am holding in escrow. As far as value is concerned, there is nothing there, Judge.

MR. GREENIDGE: The other thing is that on the same pages 28 and 30, Mr. DeSalvatore is asked again about the bar, how is the bar business. He doesn't say I own the bar but he indicates the payroll is killing me in the bar. I think it indicates he owns the bar.

MR. PREMINGER: I dispute that. You can be a manager and say something like that.

THE COURT: You may dispute it.

MR. PREMINGER: All the conversation indicates is that Mr. DeSalvatore works and that he is concerned about his bar. This is not the normal complaint of somebody engaged in the narcotic traffic. These are arguments that would establish my position more vividly.

MR. GREENIDGE: Also there is another occasion that when they passed a certain place, the defendant said: "See that joint with the lights on over there?" and Mr. Pincus said, "Yes." The defendant said: "That

used to be my place." Which indicates at least, in the Government's mind he is not the small time wage earner that defense counsel is trying to picture him as being.

Throughout the trial it was brought out that he walked around the Drift Inn as if he owned the bar. The evidence will point out that we have 15 tapes in evidence which he is talking to Mr. Pincus to about the purchase of drugs and narcotics.

MR. PRAINDOUR: I object to referring to tapes that I didn't have a right to cross-examine on. He pled guilty.

THE COURT: If Mr. Greenidge wishes to point these items up I will permit it. Of course, you must realize that these were the things that were present at the trial. If Mr. DeSalvatore had been on trial these were the things that would have been present. They were present and were received as part of the record of the case.

MR. PRAINDOUR: He wasn't permitted to have an attorney present.

THE COURT: He was permitted to have an attorney but you chose to do otherwise. That was up to you. You appeared to be the one who told him "you are guilty, you might as well plead guilty," but you can't say he

wasn't permitted. He would have been on trial with the others.

MR. PRUNINGER: By the act of pleading guilty, your Honor, he removed himself from the proceeding. Now, to use the evidence of the proceeding is unfair.

THE COURT: I am going to sentence him on what he pleaded to and not the other things, but of course after hearing the evidence at the trial the Court is fully convinced as to the guilt. And it was this evidence that brought about the Court's position as to that.

MR. PRUNINGER: The reason the defendant pleaded guilty instead of going to trial is many. One of the main reasons is he wants to show to the Court in his plea of guilty that he recognizes that he did wrong and he wants to avoid a trial, avoid the Government having to prove him guilty and in that way insure some benefit or favor from the Court in the sentence.

THE COURT: There is nothing wrong with that. At the same time, if the defendant were to go to trial, the Court could in no way hold that against a defendant for having gone to trial. You are not punished for going to trial. You are punished, if you are punished, for the crime committed. You are not punished for going

to trial or not going to trial. There is no additional punishment for doing that.

MR. GREENIDGE: I have two further points that I would like to bring out. Page 22 of Exhibit 33, which is in evidence, inevidence in the criminal trial, Mr. Pincus at one point in the tape indicated he did not want to front the money to Mr. DeSalvatore, and Mr. DeSalvatore and I think page 22 indicated "I gave up $350,000 myself." I would like to draw the Court's attention to the fact that they are talking about fronting dope. In this case he is saying he fronted $350,000. His claim that he only made $1,000 from his deal ignores his statement in Government's Exhibit 33 Number One, and ignores the fact that in the sale on February 18th, he received $24,000 himself that was fronted by Mr. Pincus and that is in evidence, your Honor.

(Continued next page)

MR. PREMINGER: Judge, I think we are going on totally contrary to my understanding of what Mr. Greenidge told me his position would be at the time of sentence. Contrary to the spirit of the plea we took. He is trying to show, without saying in so many words -- after saying he wouldn't take a position -- he is going ahead and establishing from the trial, from testimony in the trial which we were not a part of, he is trying to show that Mr. DeSalvatore was a serious participant in that.

THE COURT: Your presentence memorandum which you presented before the Court, presents to show the contrary.

MR. PREMINGER: That is right.

THE COURT: It was based on the position you took that theGovernment felt that they had to clarify what the issues were.

MR. PREMINGER: I disagree with that. The probation report is prepared by the Government, in which they state their position, and now we state our position. What Mr. Greenidge is doing is breeching our agreement at the time we took the plea.

MR. GREENIDGE: I have one further point. That is, in one case Mr. DeSalvatore indicates that -- in his presentence report that -- the only person he dealt with

was Mr. Adamo. In Exhibit 38 Mr. Adamo is asked by Mr. Pincus what type of heroin are you selling me, brown or white, and Mr. Adamo's answer was "huh?" Mr. Adamo didn't know the difference of what he was selling. The testimony from Mr. Pincus is what Mr. Adamo was selling came from Mr. DeSalvatore. That is the Government's position.

MR. PREMINGER: It's counsel's conclusion that because of what one fellow says "huh -- "

THE COURT: There is no basis for that.

MR. DE SALVATORE: Thank you.

THE COURT: Is there something you wish to say?

MR. DE SALVATORE: No.

MR. PREMINGER: Do you want to?

MR. DE SALVATORE: We were passing a pizzaria that my father opened up in approximately 1950 or '52 and sold it in '58 or '59, and I said "that used to be my place," meaning my family's place. That's all.

THE COURT: Thank you. Anything further?

MR. PREMINGER: No, your Honor.

THE COURT: Mr. Greenidge?

MR. GREENIDGE: Nothing further.

THE COURT: For a little over three weeks the Court was engaged in a trial of the co-defendants in the

very same indictment to which this defendant has pleaded guilty as to count seven.

The Court is fully aware that this is a very serious offense and that the defendant was implicated and played a leading role in this situation.

The Court has given consideration in its sentence in this matter to the fact that the defendant pleaded guilty. This defendant has previously been implicated in crimes involving narcotic drugs on two occasions, once in this court and once in Canada. It would seem that these situations would serve as a warning to the defendant to refrain from dealing in drugs, but they did not.

Although the defendant maybe a first offender as far as his conviction record is concerned, the Court did take into the account that the defendant had some prior involvement with narcotic drugs and should have kept out of the drug trade. Instead he chose to involve himself in a serious and dangerous fashion in the possession and sale of narcotic drugs.

MR. PRIMINGER: I think the case here was -- I think that took place around the same time as the case with Pincus, Judge.

THE COURT: Which?

MR. PRIMINGER: The case he is being sentenced on

now, Judge, and the one in the Eastern District. They were during the same time period, Judge. You say it should have served as a warning and I say it did, since that time he hasn't been involved.

THE COURT: You say this is the same case?

MR. PREMINGER: I say it took place during the same time period, Judge. He was acquitted in June or July of 1975.

MR. GREENIDGE: From December '74 --

THE COURT: Between February and December of 1973.

MR. PREMINGER: He was acquitted in July of '75 on a case in the Eastern District here. What I am saying to your Honor, here, his involvement predates his trial in this case and since 1975 Mr. DeSalvatore --

THE COURT: That was '73. These items are '75. In the case before the Court that is.

MR. GREENIDGE: He was out on bail.

THE COURT: When these items took place?

MR. DE SALVATORE: No, I was not on bail. I was acquitted.

THE COURT: But that involves -- that prior case on which he was acquitted for possession with intent to distribute two pounds of heroin was during of February

and September 1973 --

MR. PREMINGER: Right.

THE COURT: What is before the Court now? I don't have the indictment. What is the time frame?

MR. GREENIDGE: December 1st 1974 to December 1st 1975.

THE COURT: So these are subsequent acts.

MR. PREMINGER: December '74, sort of before and overlaps.

THE COURT: Sort of comes right after it. But it's not the same.

MR. PREMINGER: I didn't say it was the same. It involved the same time period.

THE COURT: All right.

Further, in the instant case Mr. DeSalvatore was involved in several narcotic transactions involving a total of $38,400 in Government money which has never been recovered. That is what is before the Court.

And based on the plea, based on the fact there was a trial in which the facts of this matter came out, and the Court is convinced of the guilt of this defendant, it is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative to be imprisoned for a term

of 10 years plus a special parole term of [illegible].

MR. PRUNDEL: Judge, your Honor is considering all the things the United States Attorney convinced us he would not being into the case. He is being sentenced on all the evidence in the trial which he was not a participant in. He pleaded guilty to avoid it. The fact he took the plea in part [illegible] to be confronted by evidence that he wasn't present to cross-examine --

THE COURT: From the trial the Court is convinced that Mr. DeSalvatore was one of the central and principal figures in connection with the indictment which is before the Court. This is the basis of the Court's position, and not to any marked extent the ideas which Mr. Greenidge brought out this morning -- which he felt were put before the Court to clarify any discrepancies which may have arisen concerning the presentence report -- and the seriousness of this offense, and the fact that this man had a prior history in drugs and he should have known better.

MR. PRUNDEL: Prior history -- it's not a history, there is no record there. I think it is unfair.

THE COURT: It's not a record, but it should have been a warning to him to get out of the drug business.

But he chose to stay in the drug business.

MR. PREMINGER: Your Honor is saying he was in the drug business although he was found not guilty.

THE COURT: I am saying these things should have been a warning to this individual but evidently they were not.

MR. PREMINGER: May we have a one week stay of execution? Mr. De Salvatore has two things that --

THE COURT: Stay of execution to October 27, 1976 at noon of that day. Mr. DeSalvatore is to surrender himself to the United States Marshal in this building on the first floor.

MR. GREENIDGE: At this time, I move to dismiss counts one through six in criminal 75-CR-907.

THE COURT: The application is granted.

MR. GREENIDGE: Thank you, your Honor.

THE COURT: Thank you.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA,

-against-

75 CR 907

LOUIS JAMES DeSALVATORE, a/k/a LOUIS PIZZA,

Defendant.

- X

DEFENDANT, LOUIS JAMES DeSALVATORE'S
SENTENCE MEMORANDUM

FAMILY AND WORK BACKGROUND

The defendant, LOUIS JAMES DeSALVATORE, lives at 1148 East 12th Street, Brooklyn, New York, a one-family house which is owned by his father and mother. Both his parents work, his father as a longshoreman, and they purchased this house approximately six years ago for approximately $35,000.00. The defendant rents the home from his father at a rental of $250.00 a month.

He is employed as the manager of the Drift Inn, located on Coney Island Avenue in Brooklyn, where he received an income of approximately $17,000.00 a year. He has filed income tax returns indicating that revenue. In addition, he owns two ice cream trucks which are operated by his two sons, who are married and support themselves and their families from the revenue obtained from the ice cream trucks.

Mr. DeSALVATORE is far from the man that the government would picture him to be and in reality is a person who has worked hard for himself and his family, showing an industriousness and a willingness to sacrifice which is uncommon. Mr. DeSALVATORE obtained these ice cream trucks in 1974 and 1975, and owes money on both of them. He has a car loan on his 1974 Oldsmobile with about ten payments in the amount of $123.00 a month left, and he has a second loan on one of the trucks payable to the First National City Bank with two years left. These payments are $180.00 a month, and he is presently not up to date in his payments.

The defendant lives with his wife, ROSE, to whom he has been married for twelve years, and lives with four children, including a twenty-one year old daughter who works and contributes to the support of the family. His second oldest child, LINDA, attends high school and all his family are in good health. His other children also attend school. Mr. DeSALVATORE never went to high school at all because he had to work to support his family at an early age. He worked for his father in the family owned pizzeria as a young teen ager until he was eighteen or nineteen years old. Then he worked for South Shore Excavation as a truck driver and received a salary of about $250.00 a week. He did this for two years while at the same time continuing to work for his father to earn extra money. He has been employed at the Drift Inn for the past six years.

Mr. DeSALVATORE had a boat in his name, and during the last trial in which he was found not guilty, he introduced into evidence a bill of

sale indicating that the boat was purchased for $5,000.00, of which $2,500.00 was cash and $2,500.00 represented notes, but he was only a half owner of the boat. The boat was in very bad shape and it took him months to restore it. One of the owners of the marina where the boat is kept testified to that effect at the last trial.

Mr. DeSALVATORE has a savings account with his wife in the First National City Bank containing about $1,000.00. He has a checking account with a small balance and owns no stocks, bonds or real estate. He occasionally uses a country home located in Lake Hopatong, but that belongs to his mother-in-law. She has had it four years and she paid for it herself with funds obtained from a long standing friend that she raised. Mr. DeSALVATORE does not own this house and challenges anyone who claims that he does.

PRIOR CRIMINAL RECORD

The defendant, LOUIS JAMES DeSALVATORE, has never been convicted of a crime except for the one on which he faces sentences. He therefore stands before this Court having been convicted for the first time. Mr. DeSALVATORE has, however, been arrested on approximately five other occasions, but it is respectfully submitted that these incidents should not be held against him because he was never convicted, or in some cases, prosecuted. He was arrested when he was seventeen years of age on a robbery charge and was acquitted after trial. He was arrested when he was about twenty-one years old on a counterfeit charge, but was never indicted. It is interesting to note that the agent himself was ultimately arrested in that case. When he was twenty-three years old he was again

arrested for robbery, but the indictment was never handed down and the charges were dismissed. When he was twenty-seven years old he was arrested in Canada on a narcotics charges but there, too, the case was dismissed and he was never indicted. When he was twenty-eight years old he was again arrested in the Eastern District of New York and charged with narcotics. This case went to trial and the defendant was acquitted by a jury. The only other arrest that he has is the one that resulted in the within conviction.

DEFENDANT'S INVOLVEMENT IN THE CRIME HEREIN

It is most respectfully submitted that although the defendant has been convicted by a jury he stands before this Court, not as a major dealer in narcotics but as one who did not have a significant role in the events which were the subject of this prosecution. In fact, he put two people together and acted as a go-between regarding ROBERT PINCUS, a government agent and the person that bought narcotics from GEORGE ADAMO. For this he received approximately $1,000.00 and he pleaded guilty to the seventh count of the indictment, Conspiracy to Traffic in Narcotics. It is significant to note that the defendant denied every other count in this indictment. I would also like to point out that putting the people together for the purpose of dealing in narcotics, as was alleged in the seventh count, could also be considered Aiding and Abetting, as he was charged with on the first six counts, so that we are really dealing with one event here and not with seven different narcotics transactions. Mr. DeSALVATORE's involvement came about due to constant urging by PINCUS to get a connection for him so that he could make narcotics purchases. I

would direct this Court to the 3500 material in this case, which showed that Mr. PINCUS stated the defendant got $200.00 or $100.00 each time someone went down when he bought narcotics from ADAMO. This was demonstrated by the 3500 material and PINCUS' grand jury testimony, so that in truth and fact, Mr. DeSALVATORE really only was a middle man in this situation. That material shows that Mr. DeSALVATORE never did anything and that the entire basis is the testimony of PINCUS, not the most reliable source of information at best. This informant admittedly received about $44,000.00, and of course it was to his great interest to exaggerate the transaction and involve the defendant.

DEFENDANT'S ANSWER TO ALLEGATIONS CONTAINED IN THE PROBATION REPORT WHICH ARE UNTRUE OR INACCURATE.

There are certain things that are contained in the probation report prepared for use by this Couet which the defendant feels should not be relied on and are inaccurate. They are taken as follows in chronological order:

1. On page 3 of the probation report there are allegations that the defendant admitted handling 100 lbs. of marijuana. The defendant categorically denies that he ever made such an admission or that he ever handled 100 lbs. of marijuana.

2. On page 5 of the probation report it is alleged that telephone numbers taken from the defendant when he was arrested were in code and were actually numbers of members of organized crime. The defendant would like to categorically deny that such is the case. He was arrested while in a bar and anyone can come into a bar, so that if there were any

people in the place who were members of organized crime, which we do not think is the allegation, this should not be held against the defendant. The defendant denies that these telephone numbers are organized crime numbers, and in the event the government presses this issue, the defendant would demand a hearing with regard to this claim.

3. On page 5 the probation report indicates that one CLARK ECONOMY was acting on behalf of the defendant for the purpose of following the government informant after this case was over. The defendant denies that, and strenuously asserts that such an allegation is pure rubbish. Mr. ECONOMY is a friend of the defendant and was actually driving him to and from Court because he had been injured and could not drive his own car. This can be documented by medical proof if the Court desires.

The report also seems to allege that the defendant's record contains charges with respect to Treasury Notes or Bonds, but this is in error, since the defendant was never charged with such crimes, and it would make no difference, since he has no prior convictions in any event.

4. On page 10 of the probation report there is an entry regarding the defendant's arrest of July 8, 1975, but it fails to indicate that that case resulted in an acquittal by a jury of all charges against the defendant.

5. The probation report has tried to assert that the defendant is a major dealer in narcotics and that he failed to file income tax returns. The defendant categorically states that such an allegation is nonsense and that he filed tax returns through 1975. Without

reiterating the facts as set forth in the previous section of this memorandum, the defendant would like to refer this Court to the previous section indicating the defendant's involvement in the events which were the subject of this indictment.

6. The report also claims that according to the Canadian police the defendant was the brains behind the Canadian narcotics operation which we refer to in this report under the defendant's criminal record as being the arrest of the defendant when he was twenty-seven years old. We wish to again categorically point out that these charges against the defendant were dropped. He was completely exonerated and he was never prosecuted whatsoever. There was absolutely no proof to show that he had any partners in that operation, that he was connected with the operation or that he was involved in any way. We suggest that to put such an allegation into this probation report is nothing more than an attempt at character assassination, and that such matters should not be considered by this Court whatsoever.

CONCLUSION

It is most respectfully suggested that inasmuch as the defendant stands before this Court as a first offender, in view of the fact that this is the only conviction that he has ever had and in view of the fact of his long history or work, that the situation herein calls for leniency. The defendant is not a major dealer, he was involved in this only as a middle man, and because it would appear that the possibilities of any rehabilitation that might be desired would be great, we most respectfully suggest that supervision of the defendant on

probation would be most appropriate in the circumstances of this case.

Respectfully submitted,

MARVIN PREMINGER
Attorney for Defendant
66 Court Street
Brooklyn, New York 11201

NOT FILED

NOT FILED

United States of America vs.

United States District Court for EASTERN DISTRICT OF NEW YORK

DEFENDANT: LOUIS JAMES DE SALVATORE

DOCKET NO.: 75 CR 907

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 10 DAY 20 YEAR 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Marvin Preminger, Esq. (Name of counsel)

PLEA

[X] GUILTY, and the court being satisfied that there is a factual basis for the plea, Count 7 [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [ ] GUILTY.

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S. C. Sec. 812, 3
(a)(1) and 841(b)(1)(A) in that on or about and between the 1st day of December , 1974, and the date of this indictment, both dates being approximate and inclusive, the defendant with others did conspire with intent to distribute heroin, and cocaine.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

10 years plus a special parole term of 7 years on count (7). On motion of Asst. U.S. Attorney Greendige counts (1) through (6) are dismissed. Stay execution of sentence granted to Oct. 27,1976 at 12:00 Noon.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ OCT 20 1976 ★
TIME A.M.
P.M.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

UNITES STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- X

UNITED STATES OF AMERICA,

-against-

LOUIS JAMES DeSALVATORE, a/k/a LOUIS PIZZA,

Defendant-Appellant.

NOTICE OF APPEAL

Indictment No. 75 CR 907

- X

Name and Address of Appellant: LOUIS JAMES DeSALVATORE
1148 East 12th Street
Brooklyn, New York

Name and Address of Attorneys for Appellant: PREMINGER, MEYER & LIGHT
66 Court Street
Brooklyn, New York 11201

Offense: Conspiracy to violate Sections 812, 841(a)(1) and 841 (b)(1)(A) of Title 21 U.S.C., possession with intent to distribute a Schedule I Controlled Substance and Schedule II Controlled Substance.

Appellant appeals from the judgment of conviction convicting him of the above charges rendered October 20, 1976 (Bramwell, U.S.D.J.) and sentencing him to a maximum term of imprisonment of ten years and seven years special parole. Appellant pleaded guilty to the Seventh Count of the above indictment to cover the entire indictment.

Appellant hereby appeals to the United States Court of Appeals for the Second Circuit from the whole and each and every part of the above stated judgment. An application for bail has been denied by the Trial Court and appellant will be incarcerated during the pendency of this appeal subject to further bail applications.

TO: Hon. DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New YOrk 11201